

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 128 of 1981

in

SPECIAL CIVIL APPLICATION No 2021 of 1978

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

INDUSTRIES COMMISSIONER

Versus

T M SHAH PVT LTD

Appearance:

GOVERNMENT PLEADER for Petitioner
MR D.G.SHUKLA, SI NANAVATI for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.R.DAVE

Date of decision: 10/11/97

ORAL JUDGEMENT

1. This appeal is directed against the judgment and

order passed by the learned Single Judge in Special Civil Application No.2021 of 1978 decided on October 1, 1980.

2. The respondents were original petitioners. The petitioner no.1 was dealing in purchase and sale of varieties of coal. He applied for 600 wagons under the preferential allotment scheme for transporting black coal to Ahmedabad. The said allotment was granted by the Industries Commissioner, Gujarat State, which was sponsoring authority subject to certain terms and conditions. It was the case of the authority that the conditions mentioned in the order were not complied with by the petitioner and hence a notice was issued to the petitioner on July 12, 1978 by the Joint Director of Industries, respondent no.4 in the petition to show cause as to why it should not be denied for such period as was deemed fit and proper on behalf of the authorities. The reply to the said show cause notice was given by the petitioner to respondent no.4 on July 28, 1978. It appears that the authorities were not satisfied and accordingly an order was passed on September 6, 1978, Annexure.F to the petition, taking some action against the petitioner.

3. Being aggrieved by the said order the above petition came to be filed. When the matter came up before the learned Single Judge, the learned Single Judge was satisfied that apart from the fact that the order did not contain reasons, number of factors which ought to have been taken into account while passing the order and principles of natural justice which ought to have been observed were not observed and hence by way of interim order certain directions were issued on October 15, 1978, without quashing and setting aside the order passed by the authorities.

4. For the said purpose reliance was placed by the learned Single Judge on a decision of the Hon'ble Supreme Court in D.Subba Rao vs. State of A.P. AIR 1975 SC 94. The said order was not appealed against either by the petitioner or by the respondent authorities. Pursuant to the said order again opportunity was afforded to the petitioner and an order was passed on November 27, 1978, Annexure.X to the petition, which was challenged when the matter came up for final hearing before the learned single Judge. The said order appears to have been placed on record before the learned single Judge as is clear from the Judgment of the learned Single Judge. So far as records of the Letters Patent Appeal is concerned, it is not a part of the record. We, therefore, directed the parties to supply xerox copy of the said order and

accordingly now it is a part of the record.

5. After the said order was passed when the matter placed before the learned single Judge, the learned single Judge heard the parties and by judgment and order which is impugned in the present Letters Patent Appeal held that there was total non-application of mind on the part of the authorities in taking into account considerations as per the interim order passed on October 15, 1978. The learned Single Judge was also of the view that the principles of natural justice were not complied with and sufficient and adequate opportunities were not afforded to the petitioner. In the light of the said finding, the learned Single Judge quashed and set aside the said order passed by the authorities and directed the authorities to continue the allotment which was made in favour of the petitioner.

6. A prayer was made at that time before the learned Single Judge that since the order was set aside by the court on technical ground, namely, that in violation of the principle of natural justice and non-application of mind the matter should be remanded either to respondent no.4 or to respondent no.3 superior authority, but order may not be finally quashed and set aside by not permitting appellants to decide the case according to law. 7. the said prayer was, however, negatived by the learned Single Judge observing that when earlier order was passed and inspite of the said order sufficient opportunity was not extended and the order was found to be defective, it was not a fit case to give such opportunity to the respondent. The learned Single Judge was also of the opinion that there was delay and after such delay it would not be desirable to give that opportunity to the authorities.

8. We have heard Mr.Divetia, learned Assistant Government Pleader for the appellant and Mr.D.G.Shukla for Mr.S.I.Nanavati for the respondents. So far as the merits are concerned, Mr.Divetia could not point out anything from which it can be said that the learned Single Judge has committed any error of law in recording a finding that the order suffered from non-application of mind and in violation of the principle of natural justice. After appreciating the facts and circumstances of the case and considering the interim order passed by the learned Single Judge earlier on October 15, 1978 and the order at Annexure.X, the learned Single Judge was of the view that the order suffers from non-application of mind. In the light of the said facts, we are of the view that the learned Single Judge has not committed any error

which requires to be corrected in exercise of the appellate jurisdiction of this court.

9. Mr.Divetia, however, vehemently argued that ordinarily in such cases, when the order is set aside, the matter ought to have been remanded by the learned Single Judge by extending opportunity to the authority to pass an appropriate order in accordance with law. He, however, submitted that the learned Single Judge was not right in observing that there was undue delay in the proceeding. For the said purpose, he drew our attention to the relevant dates. He submitted that the first order was passed in September 1976. Immediately thereafter interim order was passed by the learned Single Judge and the matter came to be finally allowed in December 1980. Thus, there was no undue or unreasonable delay and taking into account the period undertaken by the authorities, it was expected of the learned Single Judge to grant such opportunity and to that extent order passed by the learned Single Judge deserves to be set aside.

10. In our opinion, it cannot be said that even that part of the direction deserves any interference. It may be true that the day on which final order was passed by the learned Single Judge i.e. December 1, 1980, there was no undue delay but one of the reasons which weighed with the learned Single Judge was that inspite of the interim order and the direction issued by the learned Single Judge, they were not complied with. It was indeed a relevant consideration. Moreover, as submitted by Mr.Shukla, as on to day, more than 17 years have passed and it would not be appropriate to interfere with such direction at this stage. In our opinion, the submission is well founded.

11. In the result, we are of the view that there is no substance in any of the contentions raised by the learned Assistant Government Pleader and appeal deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

Dt. 10.11.1997.

(C.K.THAKKER J.)

(A.R.DAVE J.)
